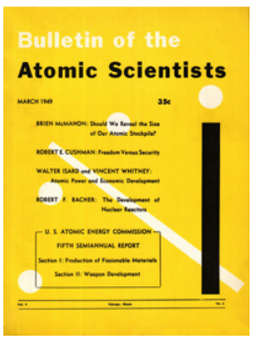
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Freedom Versus Security

Robert E. Cushman

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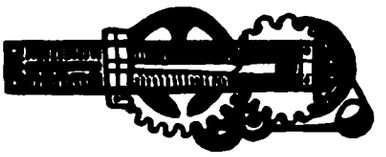
FREEDOM VERSUS SECURITY



Robert E. Cushman

This urgent plea for the reconciliation of security with freedom comes from a distinguished student of American institutions. Robert E. Cushman is Goldwin Smith Professor of Government at Cornell University and editor of the current series "Cornell Studies in Civil Liberty."

FIVE years ago the American Physical Society would have had no reason for asking a man whose trade is the study and teaching of government to address it. Had I at that time wandered by mistake into one of your meetings, I am sure I should have beat a hasty retreat from ideas and a vocabulary well over my head.

Since that time you physicists have pretty well altered the face of the earth and the waters under the earth. By the atomic bomb and other achievements in nuclear physics, you have revolutionized the science of warfare, upset the equilibrium between nations, and recast many of mankind's traditional and basic patterns of thought. The physicist of yesterday has plumped himself squarely into some of the toughest issues of statesmanship; the statesman and politician of yesterday is fumbling with the implications of scientific discoveries which he only vaguely understands. While this has been going on, and partly because it has been going on, our relations with the Soviet Union have steadily worsened, until Russia and the Western Democracies now sit glaring malignantly at each other, each wondering what cards the other actually holds, and how and when he proposes to play them.

The uncharted and rather frightening implications of what has happened in the last few years have drawn together men of your profession and mine in an effort to pool our wisdom and bring it to bear on the new and difficult problems we face today. One of these problems, and one which vitally affects both the integrity of scientific investigation and the safety of our democratic freedoms, I have chosen to discuss tonight.

I have borrowed the phrase, "freedom versus security," from the record of a loyalty board hearing in Washington some months ago in which a federal employee was asked the question, "If you had to choose between freedom and security, which would you choose"? I leave to your imagination which of the two possible answers was supposed to be right, or what light either answer could throw on the employee's loyalty to the United States Government. I think the question was stupid in its context; but I also think it was vicious in its callous assumption that if we are free we cannot be safe; if we are safe we cannot be free.

I do not deny or minimize the existence of threats to our national security. I have no doubt that there are in this country foreign agents, disloyal Americans, and various groups and individuals seeking to undermine our institutions. To read the report of the Canadian Royal Commission on Espionage is a very sobering experience. I believe that we must deal effectively with dangerous and disloyal persons. The Government is now engaged in a broad and diverse program to separate the sheep from the goats, a program ranging all the way from the bumbling circus performances and autos da fe of the House Committee on Un-American Activities to the scrupulous efforts of some of the agency loyalty boards to administer fairly the President's Loyalty Order.

I cannot describe or appraise this program. What I propose to do is to suggest for your consideration a framework of principles by the wise application of which I believe we can protect our national security and at the same time preserve the civil liberties upon which American democracy is grounded. There are three of these principles, and I shall discuss each of them in the context of the government's current program to control subversive activity and protect the national security.

I WOULD state the first principle in the words of Charles E. Merriam: "Security without Militarism", the time-honored English and American doctrine that military power must at all times be subordinate to civilian authority.

We all respect and admire the courage, patriotism, and professional efficiency of the men who direct our armed services. It implies no criticism of them to emphasize what a very limited kind of task is assigned to the professional soldier in a democratic state. The job of our armed services is to train and mobilize force, to be used when and where force is needed, to be at all times ready to defend the national security. To do this military power must be able to move fast, to make quick and final decisions, and to protect its plans and movements by complete secrecy. It cannot afford the luxury of the deliberate procedures, the free and open discussion, and the scrupulous concern for minority rights which should characterize the work of the political branches of government in dealing with public policy. The professional soldier is trained to do his work in a context in which independence of thought, freedom of speech, and especially the freedom of criticism seem to spell insubordination.

WE FOUGHT World War II with a minimum sacrifice of civil liberty. We preserved freedom of speech and press, and we avoided the hysterical witch-hunting which went on during and after World War I. The one black spot on our record resulted from the intrusion of the Army into the area of civilian life. I refer to the removal from their homes by military force of 70,000 American citizens of Japanese origin, against no one of whom were any charges of disloyalty or subversive activity brought, and their imprisonment in concentration camps for the duration of the war. These citizens were given much more summary and brutal treatment than were most of the enemy aliens in our midst.

When at the close of the war the Supreme Court, by a divided vote, held this mass evacuation constitutional, the best rationalization it could produce for its decision was that the evacuation was a *fait accompli*, and it was too late to do anything about it. In time of war, said Mr. Justice Black, we must trust our military commanders, and "we cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjusti-

An address given at a meeting of the American Physical Society in New York on January 27, 1949.

fied." But the calm perspective of hindsight makes it very clear that the Army made a cruel blunder which thoughtful and informed people in increasing numbers regard as a national disgrace.

Occurrences like this must put us and keep us on our guard. We must see to it that the soldier sticks to his soldiering. To turn over to the Army the intricate and fundamental problems of national policy involved in the control of atomic energy, or to turn it loose on the delicate task of dealing with disloyalty or subversive activity in our civilian population is to invite the most serious trouble. To take the policeman off his beat and put him at the job of running the public schools or passing the city ordinances is both bad democracy and bad administration. He will bungle the new job, and he will have to neglect the one for which he is trained.

In our present semi-hysterical feeling of insecurity, we should not allow ourselves to be frightened into inviting our armed services to take over tasks which are nonmilitary, and we should be vigilant to see that the military-minded camel does not get his head under the tent.

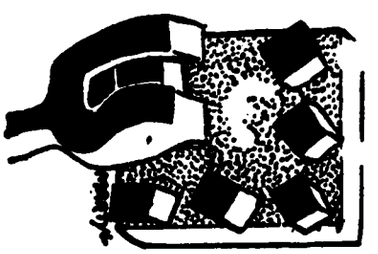
I LAY before you as a second principle that secrecy is the enemy of both science and democracy. Secrecy destroys that freedom of intellectual life upon which the advance of knowledge depends; it prevents the open and responsible management of the affairs of a democratic state. Our national security requires secrecy with respect to many things—our weapons of war, our military and naval strategy, and all matters which, if known, would increase our vulnerability to attack.

The Government has decided that what we have learned and are in the process of learning about the atomic bomb and its scientific context must be rigidly safeguarded. And it follows, of course, that wide discretion must be given to the responsible officers whose job it is to see that these secrets are kept. The great and persistent danger is that the secrecy necessary to military success in time of war will be needlessly continued in time of peace, and that under the pretext of protecting the national safety we shall withdraw from the area of common knowledge and free public discussion matters having nothing to do with national safety.

It would be presumptuous for me to explain to this group the chilling and crippling effect of secrecy upon scientific work. You know from experience what I know from hearsay, and many of you have publicly urged this point far more effectively than I can. But any man who is engaged in trying to advance the frontiers of knowledge in any field, be it nuclear physics, biology, economics, or government, knows how costly and frustrating it would be to be cut off by walls of secrecy from his colleagues and his critics.

HE KNOWS how valuable and essential it is to discuss his problems freely, to exchange information and receive suggestion, either in conversation with fellow-workers or through the pages of scientific journals. He knows how vitally important is the scrutiny and criticism of other experts, both in keeping him keyed to his own highest level of performance, and in correcting his mistakes. He knows how wasteful is the duplication of scientific effort which results from barriers which prevent men working on the same research from knowing that they are doing so and pooling their results. He knows how almost impossible it is to train younger scientists, or to persuade younger men to seek training as scientists, when large areas of scientific knowledge are marked "verboten." The importance of this last point is highlighted by the recent statement of the new Director of the Research Division of the Atomic Energy Commission that in his opinion most atomic research ought to be kept out of our universities because such projects impose security curbs which are damaging to free academic discussion.

The present passion for secrecy, however, is not confined to our scientific laboratories or to the production of military weapons. It extends into many areas in which public policy is made and administered, and in which the civil liberties of citizens are involved. Perhaps we discern here the influence of our military men, in whom a zeal for secrecy is an occupational disease. Congress has given our military authorities wide discretion to make secret, or to "classify," whatever seems necessary in the interests of national security. This is necessary and proper. Left to his own impulses and desires, however, the typical military man will



"classify" just about as much as he thinks he can get away with. And many other high officers of government will follow his example.

There is good reason to believe that many of our present secrecy requirements have nothing to do with the national security and have been imposed either through carelessness, stupidity, or an arrogant desire on the part of some public officials to hide from criticism behind an impenetrable screen of classified documents and transactions. If this is true, and to the extent to which it is true, the normal democratic processes of a free people are in danger.

LET me illustrate this point. One of the sharp controversies about the President's Loyalty Program, of which I shall speak in a moment, relates to the power given to the Attorney General to designate groups and organizations as subversive or communistic without allowing these groups a public hearing or an opportunity to defend themselves. Back in 1920, in the midst of one of the really pathological orgies of witch-hunting in which we have indulged in this country, Louis F. Post, then Assistant Secretary of Labor in charge of Immigration and Naturalization, a wise and temperate public official, conducted hearings to determine whether the Communist Party and the Workers' Party of that day did in fact advocate the overthrow of government by force and violence, as charged. The records of those hearings are in the National Archives. We should study those records, not only for the information they contain but for the light they may throw upon the usefulness of such hearings. We cannot study them, however, because they are "classified" under a rule of the Department of Justice that the records and documents of the Immigration and Naturalization Bureau be kept secret for forty years.

Here is another example. There are probably more than two hundred boards in the national government now dealing with the security and loyalty clearance of federal employees. They pass on the loyalty of the janitors in the National Art Museum and of the scientists doing top secret work under the Atomic Energy Commission. One of these is the Industrial Employment Review Board, composed of Army, Navy and Air Force officers, which reviews the military clearance of scientists in laboratories controlled by the armed services, or working elsewhere on "classified" projects for the armed services. So far as

I can learn, this is the only board whose entire proceedings are "classified."

The Atomic Energy Commission not only gives a challenged employee a complete transcript of his hearing, but has recently made public a list of eighteen criteria by which security clearance will be judged.[1] But the Industrial Employment Review Board is under positive orders from the armed services to destroy physically all notes or memoranda which a challenged employee or his lawyer may have made during the hearing before the board, and the employee is forbidden to discuss his case outside. Why does the national security require secrecy with respect to the work of this board if it is unnecessary in the Atomic Energy Commission cases? Is this secrecy rule possibly due to the fact that the Army just does not like to have people looking over its shoulder and criticizing its work?

However necessary secrecy may be in any concrete situation, and on this I pass no judgment, I believe that the policy of granting broad power to large numbers of officials to "classify" information, records, and official proceedings is to invite the abuse of that power for the purpose of avoiding publicity and legitimate criticism. Democracy is threatened and responsible government is impossible if public officials are allowed to decide that they will carry on their work in the dark. I suggest in the words of Lord Acton: "Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity."

MY THIRD principle is this: National security does not require us to suppress freedom of political and economic thought or freedom of association. We must not allow ourselves to be bullied or argued into the fallacy that we cannot be safe unless we all hold uniform and orthodox opinions and consort only with persons of proved respectability. Edmund Burke once told the British House of Commons, "An Englishman is the unfittest person on earth to argue another Englishman into slavery." By the same token an American is the unfittest person on earth to tell another American what he shall think, what he shall say, and how he shall choose his friends. And yet there is an unhealthy zeal on the part of some Americans to do just this, and an equally unhealthy willingness on the part of other Americans to tolerate it. This is the more insidiously dangerous because it goes under the label of Americanism. We badly need the sound advice of Mr. Justice Brandeis:

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.

We are now engaged in a gigantic security and loyalty clearance program for all persons who work for the Government. I think it is imperative that this program be studied with fair-minded thoroughness so that we may know just how it works, whether it violates or threatens our democratic freedoms, and what we should do about it if it does. Such studies are being made. One of great value has just been published in the Yale Law Journal,[2] done by members of the Yale law faculty. A much more elaborate study is now going forward under my direction with the aid of foundation funds, and since scholars are presumed to do their research before they reach their conclusions, I would not offer now any final judgments on the government's loyalty and security program, even if time permitted. I think I may properly comment, however, on some of the very obvious danger signals which are readily discernible in this program, and I shall confine these comments in the main to the President's Loyalty Program, based on the Executive Order of March 21, 1947.

Reduced to its simplest terms, this program requires loyalty clearance for all federal employees, present and future, in the executive branch, sets up machinery and procedures whereby any employee whose loyalty is challenged may have a hearing, provides an appeal to a specially constituted Loyalty Review Board, and announces a code of standards by which disloyalty in an employee is to be determined. The basic test of disloyalty is whether "on all the evidence reasonable grounds exist for the belief that the person involved is disloyal to the Government of the United States."

SINCE disloyalty, however, is a vague and flexible term, the Order goes on to state that evidence of it may be found not only in various acts which are already crimes against the government, but in an employee's "membership in, affiliation with, or sympathetic association with" groups or organizations designated by the Attorney General as "subversive, communist, fascist, etc." The Attorney General has thus far listed 123 such organizations, although the House Committee on Un-American Activities assures us that as of December 22, 1948, there are really 562 of them.

THE loyalty screening of federal employees, except those hereafter appointed, is about complete. The investigative work was done by the FBI. Congress has thus far appropriated $17,606,000 to pay for the job, and the records of 2,350,097 employees have been examined. In only 7,667 of these records was any sort of derogatory information found. Full field investigation of these 7,667 resulted in disloyalty charges against 1,317. One hundred and thirty-four of these resigned, and 103 others were found by loyalty boards to be ineligible for federal employment. Several of these have been reinstated by the Loyalty Review Board. Some members of Congress are very unhappy about these results. They feel that they have not had their money's worth if not more than 200 disloyal employees can be turned up at a cost of $17,000,000.

I wish to direct your attention to the following facts about the Loyalty Program and its administration. These are the danger signals to which I referred.

First, the Attorney General's blacklist of subversive organizations has been of controlling importance in determining loyalty. After all, communists and followers of the party line are the foxes which the hounds are pursuing, and "sympathetic association" with a front organization is usually regarded as pretty conclusive evidence of disloyalty. Charges against an employee have frequently gone beyond the terms of the Order and have alleged "sympathetic association" not with a blacklisted group, but with an individual who is a member of such a group. In one case this person was the father of the accused employee.

I think the language of the Loyalty Order is a standing temptation to those who administer it to test a man's loyalty by the conduct, affiliations, and opinions of his friends and associates almost as much as by his own. Some loyalty boards have resisted this temptation, but many have not, and I am afraid that the principle of guilt by association is in danger of finally dominating the entire loyalty program.

Second, the loyalty screening places upon any employee whose loyalty is questioned the burden of disproving or

[1] Published in the *Bulletin* V (February, 1949), 62-63.

[2] "Loyalty Among Government Employees," by Thomas I. Emerson and David M. Helfield, *Yale Law Journal*, LVIII (December, 1948).

explaining away the accusations made against him. An official closely concerned with the loyalty program made the comment about accused employees in general that, if they had been careful about their associates, had not got a dirty record, or had not stubbed their toes sometime, they would not be in trouble.

If the mere filing of charges creates a presumption of guilt, the plight of the employee is doubly serious because the charges themselves are often stated in vague terms and are based upon evidence which the accused is not allowed to examine and the testimony of witnesses he is not permitted to confront. In one case the entire charge was stated in these words, "You are charged with being in sympathetic association with the Communist Party"—nothing more. In another case the charge was, "You are reported to be an ideological Communist." How does an innocent man go about proving that charges like these are false?

THIRD, in loyalty hearings the following questions have been asked of employees against whom charges have been brought. Many of you could supplement this list from cases with which you may be familiar.

Do you read a good many books?
What books do you read?
What magazines do you read?
What newspapers do you buy or subscribe to?
Do you think that Russian Communism is likely to succeed?
How do you explain the fact that you have an album of Paul Robeson records in your home?
Do you ever entertain Negroes in your home?
Do you believe that Negro blood should be segregated in the Red Cross blood bank?
Is it not true, an employee was asked, that you lived next door to and therefore were closely associated with a member of the I.W.W.? When the employee replied that it was true, but that he was eight years old at the time, the questioner said, "Children are very impressionable."

Four, there is reason to believe that loyalty boards are perfecting a sort of punch-card technique for judging a man's loyalty. If he buys the *Daily Worker* from a newsstand, the fact rates so many points; if he subscribes to it, the rating is a bit higher. If he joined the Washington Book Shop, or gave money to the Spanish Loyalists, or petitioned for the pardon of Earl Browder, or as a college student belonged to the American Student Union, each fact is weighted. I am not suggesting that IBM machines are used, but I am suggesting that men's loyalty is being scored by a process not very different from the one familiar to all of us who read student examinations, with this important difference: a teacher will usually tell a student why he receives a low grade, but the Loyalty Review Board in Washington has forbidden the agency loyalty boards to give an employee any statement of the reasons which led to a finding that he is disloyal to the Government of the United States.

I wish to be wholly fair about these matters. I have quoted the worst examples I could find of the silly and improper questions asked at loyalty hearings. They are, of course, lifted out of their contexts. I have no way of knowing to what extent they are typical. We do know that many of the loyalty boards are composed of able and fairminded men who do their unpleasant job as scrupulously as it can be done. We know further that some of the employees who were subjected to stupid and brutal questioning were finally cleared, either by the board itself or by the Loyalty Review Board.

WHEN all this is said, however, certain facts still remain. The federal employee realizes that the questions I have quoted may be put to him. He knows that loyalty boards think it is important to know what a man reads, what newspapers and magazines he takes, and what societies he belongs to. He knows of cases in which vaguely stated charges have been brought, based upon irresponsible and sometimes malicious gossip, against men and women in the government, and it has cost the accused employee months of agonizing anxiety and effort and twelve or fifteen hundred dollars to get cleared of those charges. He knows that even if cleared, the aroma of suspicion will always cling to one whose loyalty has ever been challenged, and that, in fact, no loyalty case is ever finally closed. The shroud of secrecy which official rules have imposed on all those proceedings tends, of course, to increase his sense of insecurity. He learns through the grapevine that there are many unidentified ways in which he may have "stubbed his toe" in the past or may do so in the future, and find as a result that a lifetime of faithful service to the Government ended by the dreaded official letter, "You have been found unfit for federal employment." He knows that if this happens to him he may never know why he was found unfit, since official rules forbid giving him this information.

WE HAVE spent or shall spend on the loyalty program $17,000,000; we have screened more than two and a quarter million federal employees; we have got rid of some two hundred employees, most of whom were "sympathetically associated" with the wrong people. So far as is known, we have brought to light no professional or amateur spies or saboteurs, no criminal or subversive acts. But whether we intended to or not, we have managed to instill into the mind of every man or woman who holds a government job, or who wants to hold a government job, that he had better read the right books, newspapers, and magazines, say the right things, and, considering all the risks, had probably better not join *any* organization or society at all, since a Communist might also join it, and then he would become a fellow-traveler and be damned forever. We are in the process of building up the impression that we wish to staff the United States Government with people who in self-protection will follow two simple rules: (1) think only approved and orthodox thoughts; (2) in case of doubt, don't think at all.

May I close by stating again my own platform with regard to these problems. I believe we must resist the intrusion of military authority into areas in which the professional soldier in a democracy does not belong. I believe that we must resist the further extension of secrecy in scientific research and in government affairs, except in cases of clearest necessity, and we should rescue from official secrecy many things which ought to be open to public scrutiny and criticism. I believe that we must protect the public security without establishing a program of thought control which violates freedom of opinion, freedom of expression, and freedom of association. I refuse, in short, to choose between freedom and security. I insist that we can have both. I think it is a challenge to the patriotism and wisdom of the best minds in this country to plot out the policies and procedures by which we can adequately protect our national safety without sacrificing the basic liberties upon which we have thus far built a free life for a free people.